

ANTHONY J. PERCHETTI

IBLA 84-835

Decided November 13, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. NMC 315213 - 315215.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void if a copy of the notice of location for the claim was not received by BLM until after the close of the filing period specified under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), even though the document was purportedly mailed prior to the deadline.

APPEARANCES: Anthony J. Perchetti, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Anthony J. Perchetti appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 17, 1984, declaring the Ajax #4 - #6 lode mining claims (NMC 315213 through 315215) abandoned and void for failure to meet the requirements for recordation of mining claims under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982) and 43 CFR Subpart 3833.

Perchetti located these three claims on April 14, 1984, in T. 9 N., R. 45 E., Mount Diablo Meridian, Nevada. Copies of the notices of location for the claims are date stamped as being received by BLM on July 16, 1984. The 93-day period between the date of location and the date of receipt by BLM exceeded the 90-day limit established by section 314 of FLPMA.

In his statement of reasons, Perchetti contends he "postmarked" his copies of the notice of location two days before the deadline and sent them

"certified." He argues he "was told at the Nye County Court house that the postmark was legal."

[1] Under section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982), the owner of an unpatented mining claim located after October 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location of the claim. See 43 CFR 3833.1-2(a). Section 314(c) provides that failure to file a copy of the notice of location "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." In such circumstances, the claim is thereby rendered void. 43 CFR 3833.4(a). See United States v. Locke, 105 S.Ct. 1785 (1984). Thus, it well established that where the owner of an unpatented mining claim fails to submit the required instrument within 90 days after the date of location, BLM properly declares the claim abandoned and void. Waldron Enterprises Mining, 88 IBLA 54 (1985); David L. Richards, 88 IBLA 1 (1985); Max Lair, 87 IBLA 106 (1985).

In the present case, appellant states he mailed the documents in question before the statutory deadline. However, depositing a document in the mail does not constitute filing under Departmental regulations. 43 CFR 1821.2-2(f); David L. Richards, supra at 2. File is defined to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m). 1/ Accordingly, appellant failed to file timely where the copies of the notices of location were not received until three days after the specified time period. 2/

The Board has consistently held that the statute permits no exception to the requirements of timely filing of the notice of location with BLM, and that there is no authority to excuse a late filing or to afford any relief from the statutory consequences. David L. Richards, supra at 3, and cases cited therein. 3/ We conclude BLM properly declared Perchetti's mining claims abandoned and void.

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1/ "Timely filed" as it pertains to annual filings of evidence of assessment or notice of intention to hold claims required by section 314 of FLPMA, supra, is defined by 43 CFR 3833.0-5(m) to include receipt by January 19th after the filing period in an envelope "bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law." However, the regulation expressly provides that this 20-day grace period does not apply to filings of location documents.

2/ The last permissible day for filing by appellant was Friday, July 13, 1984. See Robert Thompson, 34 IBLA 319 (1978) (computation of 90-day period). Appellant's filings were received on the following Monday. There is, however, nothing in the record to suggest the Nevada State Office was officially closed on Friday and the aforementioned rule applies here.

3/ A document is deemed as timely filed where the last day for filing falls on a day the office is officially closed and it is received in the proper office on the next day the office is open for public business. 43 CFR 1821.2-2(e), 3833.0-5(m).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Will A. Irwin  
Administrative Judge

